

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. C-94-1023
)
vs.) Hon. Michael J. Melloy
)
MERCY HEALTH SERVICES and)
FINLEY TRI-STATES HEALTH)
GROUP, INC.,)
)
 Defendants.)

UNITED STATES' THIRD REQUEST
FOR ADMISSIONS/PROPOSED STIPULATIONS

Plaintiff submits the statements that appear in Exhibit A pursuant to Fed. R. Civ. P. 36. Plaintiff requests that defendants admit and stipulate to each of these statements for purposes of this case. To the extent defendants do not unqualifiedly admit any such statement, then as required by Rule 36, defendants "shall specifically . . . set forth in detail the reasons why [you] cannot truthfully admit or deny the matter." The deadline for your response is August 26, 1994.

Marybeth McGee
Eugene D. Cohen
Jessica N. Cohen

Attorneys
U.S. Department of Justice
Antitrust Division
555 4th Street, N.W., Room 9421
Washington, D.C. 20001
Tel: 202/307-1027
Fax: 202/514-1517

Stephen J. Rapp
United States Attorney

Dated: July 27, 1994

EXHIBIT A

Table Of Conventions

DRHS:	The proposed combined entity of Finley and Mercy.
Finley:	The Finley Hospital.
Mercy:	Mercy Health Center.
Third-party payer:	A person or entity that pays for health care services on behalf of consumer- patients, including traditional indemnity health care insurers, managed care plans, the federal Medicare program and the Medicaid programs of the States of Iowa, Illinois, and Wisconsin.
Managed care plan:	A third-party payer, such as Preferred Provider Organizations ("PPOs") and Health Maintenance Organizations ("HMOs"), which operates as a group purchaser of health services, including acute care inpatient hospital services, and which tries to reduce the health care costs of its enrollees through a variety of measures, including utilization review of its enrollees' use of health care services, and through the negotiation of contracts with hospitals to provide the services needed by its enrollees at preferential rates that are less than the stated full charges of the contracting hospitals.
The seven small rural hospitals:	Galena-Stauss Hospital in Galena, Illinois; Southwest Health Center in Platteville, Wisconsin; Lancaster Memorial Hospital in Lancaster, Wisconsin; Delaware County Memorial Hospital in Manchester, Iowa; Jackson County Public Hospital in Maquoketa, Iowa; Guttenberg Memorial Hospital in Guttenberg, Iowa; and Central Community Hospital in Elkader, Iowa.

The proposed combination: The so-called "partnership" of Mercy and Finley to be formed through creation of DRHS, which is the subject of the Government's antitrust challenge in this lawsuit.

General acute-care inpatient hospital care services: Services that are needed by patients whose medical conditions require their hospitalization overnight or longer, which include: room and board; medical/surgical services; monitoring and observation; nursing services; and laboratory, x-ray, and other support services.

1. In 1990, Mercy, through KCA Research, conducted a community telephone survey ("the survey") to assess Mercy's role in the community to help lay the foundation for future strategic planning.

2. The survey reported that the primary reasons respondents preferred a particular hospital over another one were they were familiar with it, they had a good previous experience there, or it was conveniently located.

3. The largest percentage of the survey's respondents said: (i) Mercy or Finley was the hospital that came to mind when the word "hospital" was mentioned; and (ii) said, overall, they prefer to go to Mercy or Finley in Dubuque for their health care needs.

4. Almost 97 of the survey's respondents said a wide variety of specialists is important to them when choosing a hospital.

5. More than three-quarters of the survey's respondents said the hospital being near their home is important to them when choosing a hospital.

6. For two-thirds of the physicians used by members of responding households, the survey's respondents indicated that even if they could save money, they would not begin using a different qualified physician, which was a higher percentage than reported in a survey done in 1984.

7. Only 40.7% of the survey's respondents lived in Dubuque, Iowa, zip code 52001. 59,390 of the survey's respondents lived outside of Dubuque, in 51 other zip codes from Dubuque County and Jackson County, Iowa, Grant County, Wisconsin, and Joe Daviess County, Illinois.

8. Mercy stated in its 1991-94 Strategic Plan that, while Mercy and Finley are in direct competition for Dubuque County inpatients, residents of Dubuque County do not seek care in other counties in significant numbers.

9. Mercy stated in its 1991-94 Strategic Plan that it needed a strategy that included collaboration with community hospitals, so that referrals from those hospitals of primary and secondary acute inpatient care patients would be directed to Mercy rather than to Finley.

10. Mercy expects that managed care and alternative delivery systems (as those terms are used in its 1996-2000 Strategic Plan) will continue to expand much more rapidly than Mercy has already seen.

11. Mercy plans to continue what has been a successful physician recruitment strategy.

12. It has been stated at a Mercy Board meeting (May 17, 1990) that Mercy Board members need to remember that, as Board members of Mercy, their number one priority should be to keep Mercy running and that it is the Mercy Board's responsibility to watch out for Mercy and its financial viability.

13. The Mercy Board has not retracted its statement that Mercy Board members need to remember that, as Board members of Mercy, their number one priority should be to keep Mercy running and that it is the Mercy Board's responsibility to watch out for Mercy and its financial viability.

14. Defendants have represented to the Internal Revenue Service (as recently as April 1994) that the presence of community representatives on the Governance Board of DRHS does not reflect a relinquishment of control over the operations of Mercy and Finley, and have not withdrawn or modified that representation.

15. The prices paid by Medicare to Mercy for treating Medicare patients are greater than the variable costs of treating these patients at Mercy.

16. Because the payments from treating Medicare patients result in positive contributions towards fixed costs, it is profitable for Mercy to treat Medicare patients.

17. The prices paid by Medicare to Finley for treating Medicare patients are greater than the variable costs of treating these patients at Finley.

18. Because the payments from treating Medicare patients result in positive contributions towards fixed costs, it is profitable for Finley to treat Medicare patients.

Certificate of Service

On July 27, 1994, I caused copies of the foregoing United States' Third Request for Admissions/Proposed Stipulations to be served, by facsimile and first-class mail, on:

David A. Ettinger, Esq.
Howard B. Iwrey, Esq.
Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226-3583

James D. Hodges, Esq.
Shuttleworth & Ingersoll, P.C.
Firststar Bank Building
P.O. Box 2107
Cedar Rapids, Iowa 52406

Jessica N. Cohen